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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD JOHNSON,

Plaintiff,

v.

**SREYPICH BORN, dba MANLEY'S
DONUTS; SOUTH BASCOM, LLC;**
DOES 1-10, inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR DENIAL OF
CIVIL RIGHTS AND ACCESS TO
PUBLIC FACILITIES IN VIOLATION OF
TITLE III OF THE AMERICANS WITH
DISABILITIES ACT; VIOLATION OF
CALIFORNIA CIVIL CODE §§ 51,52;
AND RELATED CODES AND
REGULATIONS**

DEMAND FOR JURY

Plaintiff, Richard Johnson, alleges as follows:

I. PARTIES

1. This is a civil rights action by Plaintiff, Richard Johnson ("Plaintiff") for disability discrimination by Defendants, Sreypich Born, dba Manley's Donuts, South Bascom, LLC, and Does 1-10, inclusive (collectively hereinafter "Defendants").

2. Plaintiff is a Santa Clara County resident with physical disabilities. Plaintiff suffers from the medical condition C-7-T-1 Tetraplegia and uses a manual wheelchair

1 which he assembles when exiting his vehicle. As such, Plaintiff's physical impairments
2 substantially limit and/or affect one or more major life activities such as standing, walking,
3 and caring for himself. At all relevant times, Plaintiff is and was a "person with a disability"
4 and a "physically handicapped person" within the meaning of the Americans with
5 Disabilities Act and California Government Code section 12926 and is a person whose
6 rights are protected by these laws.

7 3. Plaintiff is informed and believes and thereon alleges that at all times herein
8 mentioned, Defendants were and currently are the owners, operators, lessees and/or
9 lessors of the Manley's Donuts located at 2590 S. Bascom Avenue, San Jose, California
10 ("the Facility").

11 4. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their relative
13 responsibilities in causing the access violations herein complained of and alleges a joint
14 venture and common enterprise by all such Defendants. Plaintiff is informed and believes
15 that each of the Defendants herein, including DOES 1 through 10, inclusive, is responsible
16 in some capacity for the events herein alleged, or is a necessary party for obtaining
17 appropriate relief. Plaintiff will seek leave to amend this Complaint when their true names
18 and capacities are ascertained.

19 5. Plaintiff is informed and believes that each of the Defendants is and was the
20 agent, employee or representative of each of the other Defendants and performed all acts
21 and omissions stated herein within the scope of such agency or employment or
22 representative capacity and is responsible in some form or manner for the acts and
23 omissions of the other Defendants thereby proximately causing the damages complained
24 of herein.

25 6. At all relevant times, all Defendants and each of them were legally

1 responsible to Plaintiff for each of their co-defendants' wrongs, acts, and omissions
2 alleged herein as though they had each committed each act themselves, and at all times
3 authorized, directed, and ratified the acts and omissions of each remaining defendant.

4 **II. JURISDICTION AND VENUE**

5 7. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C.
6 §§ 1331 and 1343 for violations of the Americans with Disabilities Act ("ADA") of 1990, 42
7 U.S.C. § 12101, et seq.

8 8. Pursuant to supplemental jurisdiction, an attendant and related cause of
9 action arising from the same nucleus of operative facts and arising out of the same
10 transactions is also brought under California's Unruh Civil Rights Act, which act expressly
11 incorporates the Americans with Disabilities Act.

12 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is based
13 on the fact that the Facility (*i.e.*, the real property) which is the subject of this action is
14 located in the Northern District of California and that Plaintiffs' cause of action arose in
15 the Northern District of California.

16 **III. SUMMARY OF FACTS**

17 10. Plaintiff lives in Santa Clara County and has patronized the Facility several
18 times during the statutory period (*i.e.*, two years) including at least two (2) documented
19 visits on or about March 28, 2024 and April 18, 2024. During his visits to the Facility
20 Plaintiff encountered some or all of the following barriers to access:

- 21 • Surface slope of disabled parking space exceeds maximum permitted.
- 22 • Surface slope of disabled parking access aisle exceeds maximum
23 permitted.
- 24 • Surface slope of curb ramp landing exceeds maximum permitted.
- 25 • Cross slope of curb ramp exceeds maximum permitted.

- There is no path of travel from the public right of way to the facility entrance.
- Exterior entrance door landing surface slope exceeds maximum permitted.
- Entrance door lacks a smooth uninterrupted surface over the bottom ten inches of the door.
- Facility lacks accessible disabled seating locations.
- Cashier counter is too high.

11. These barriers at the Facility prevented Plaintiff from being able to use the Facility in the same manner as an able-bodied person. As a result, these barriers at the Facility and the lack of accessibility caused Plaintiff to feel like a second-class citizen. In particular, Plaintiff likes to visit the Facility because he enjoys the goods offered there. Plaintiff would like his future visits to the Facility to be more accessible so that they are more enjoyable.

12. Plaintiff believes there may be additional barriers to his access at the Facility that relate to his disability. Plaintiff intends to amend his complaint, if necessary, to provide notice of any additional violations identified during a properly noticed site inspection by his Certified Access Specialist (CAsp). Accordingly, Plaintiff anticipates seeking injunctive relief for all barriers to access which relate to his disability and are identified during such an inspection. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008).

13. Plaintiff lives near the Facility and intends to continue to visit the Facility to avail himself of the goods and/or services offered there, but will continue to be discriminated against until the barriers to his access are removed. Of course, Plaintiff would prefer if Defendants would remove the barriers to access so that he and other disabled patrons may enjoy full and equal access to the Facility.

14. Until the discriminatory policies, practices, and procedures of Defendants are modified and changed, Plaintiff will continue to be denied full and equal access to the

1 goods and services offered by Defendants to the general public because he will suffer
2 ongoing discrimination and damages by being excluded and deterred from the Facility.

3 15. Plaintiff is informed, believes, and based thereon alleges that his individual
4 experiences of disability discrimination by Defendants are representative of Defendants'
5 overall failure to maintain adequate accessible facilities and/or adequate training of
6 employees as to the rights of customers with disabilities.

7 16. The discriminatory treatment of Plaintiff by Defendants constitutes an
8 ongoing violation of both federal and state laws, and unless enjoined by this Court, will
9 result in an ongoing and irreparable injury to Plaintiff and other similarly situated persons.

10
11 **IV. FIRST CLAIM**
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
12 **42 U.S.C. §12101 et seq.**

13 17. Plaintiff realleges and incorporates by reference each and every allegation
14 contained in Paragraphs 1 through 15, inclusive, as though fully set forth herein.

15 18. Congress enacted the Americans with Disabilities Act (hereinafter "ADA")
16 upon finding, among other things, that "society has tended to isolate and segregate
17 individuals with disabilities" and that such forms of discrimination continue to be "serious
18 and pervasive social problems." 42 U.S.C. § 12101(a)(2).

19 19. In response to these findings, Congress explicitly stated that the purpose of
20 the ADA is to provide "a clear and comprehensive national mandate for the elimination of
21 discrimination against individuals with disabilities" and "clear, strong, consistent,
22 enforceable standards addressing discrimination against individuals with disabilities." 42
23 U.S.C. § 12101(b)(1)-(2).

24 20. Title III of the ADA provides in pertinent part: "No individual shall be
25 discriminated against on the basis of disability in the full and equal enjoyment of the

1 goods, services, facilities, privileges, advantages, or accommodations of any place of
2 public accommodation by any person who owns . . . or operates a place of public
3 accommodation.” 42 U.S.C. § 12182(a).

4 21. The ADA further provides that “it shall be discriminatory to afford an
5 individual or class of individuals, on the basis of disability or disabilities of such individual
6 class, directly, or through contractual, licensing, or other arrangement with the opportunity
7 to participate in or benefit from a good, service, facility, privilege, advantage, or
8 accommodation that is not equal to that afforded to other individuals.” 42 U.S.C. §
9 12182(b)(1)(A)(ii).

10 22. Discrimination under the ADA includes “a failure to take such steps as may
11 be necessary to ensure that no individual with a disability is excluded, denied services,
12 segregated or otherwise treated differently than other individuals because of the absence
13 of auxiliary aids and services” 42 U.S.C. § 12182(b)(1)(A)(iii).

14 23. The ADA further prohibits “a failure to make reasonable modification in
15 policies, practices, or procedures, when such modifications are necessary to afford such
16 goods, services, facilities, privileges, advantages, or accommodations to individuals with
17 disabilities” 42 U.S.C. § 12182(b)(1)(A)(ii).

18 24. By virtue of their acts and omissions herein alleged, Defendants have
19 violated Title III of the ADA as to Plaintiff.

20 25. Pursuant to 42 U.S.C. § 12188(a), Plaintiff is entitled to declaratory and
21 injunctive relief, and to recover reasonable attorneys’ fees and litigation costs and
22 expenses incurred in bringing this action.

23 **V. SECOND CLAIM**
24 **VIOLATION OF UNRUH CIVIL RIGHTS ACT**
25 **CALIFORNIA CIVIL CODE § 51 et seq.**

26. Plaintiff realleges and incorporates by reference each and every allegation

1 contained in Paragraphs 1 through 24, inclusive, as though fully set forth herein.

2 27. At all times herein mentioned, the Unruh Civil Rights Act, California Civil
3 Code §51(b), provided that:

4 All persons within the jurisdiction of this state are free and
5 equal, and no matter what their sex, race, color, religion,
6 ancestry, national origin, disability, or medical condition are
7 entitled to the full and equal accommodations, advantages,
8 facilities, privileges, or services in all business establishments
9 of every kind whatsoever.

8 Pursuant to §51(f),

9 A violation of the right of any individual under the Americans
10 with Disabilities Act of 1990 (Public Law 101-336) shall also
11 constitute a violation of this section.

12 28. Plaintiff is a person with a disability within the meaning of the Unruh Act.

13 29. Defendants' business location (*i.e.*, the Facility) is a business establishment
14 within the meaning of the Unruh Act.

15 30. Plaintiff suffered damages as above described as a result of Defendants'
16 violation of California Civil Code §§ 51(b) and 51(f) in multiple regards including, but not
17 limited to, denying Plaintiff the opportunity for full and equal access and enjoyment to the
18 Facility and the goods and services provided therein, in violation of both California law
19 and the ADA, as described in the Summary of Facts, *supra*, the contents of which are
20 incorporated herein.

21 31. California Civil Code §52(a) provides that each such violation entitles
22 Plaintiff to "the actual damages, and any amount that may be determined by a jury, or a
23 court sitting without a jury, up to a maximum of three times the amount of actual damage
24 but in no case less than four thousand dollars (\$4,000.00), and any attorney's fees that
25 may be determined by the court in addition thereto. . . ."

1 32. On the subject occasions (*i.e.*, on or about March 28, 2024 and April 18,
2 2024) when Plaintiff attempted to obtain the goods and services offered by Defendants,
3 he was not allowed full and equal enjoyment and access due to the refusal by Defendants
4 to provide accommodation to and around the Facility. As a result, Plaintiff suffered
5 unnecessary anxiety and panic, causing him to feel humiliated, embarrassed, frustrated,
6 and angry that he could not obtain full and equal access to the services offered at the
7 Facility simply because he was disabled.

8 33. Plaintiff was damaged by Defendants' wrongful conduct and seeks statutory
9 minimum damages of four thousand dollars (\$4,000.00) for each event of discrimination
10 and for each time Plaintiff has been deterred from returning to the business together with
11 attorney's fees and litigation costs and expenses.

12 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

13 1. That the Court issue a preliminary and permanent injunction directing
14 Defendant as the owner and/or operator of the Facility located at 202 Lincoln Street, Santa
15 Cruz, CA 95060, to remove the aforementioned barriers to Plaintiff's full and equal access
16 and establish policies and procedures so that they provide full and equal access to all
17 persons, including persons with physical disabilities as required by law.

18 2. That the Court retain jurisdiction over the Defendants until such time as the
19 Court is satisfied that Defendants' unlawful policies, practices, acts and omissions
20 complained of herein no longer occur, and cannot reoccur;

21 3. That Plaintiff be awarded all appropriate damages, including but not limited
22 to statutory damages, general damages, special damages, punitive/exemplary damages
23 and treble damages in an amount within the jurisdiction of the Court, all according to proof;

24 4. That Plaintiff be awarded all of his reasonable statutory attorney's fees,
25 litigation expenses, and costs of this proceeding as provided by law;

1 5. That Plaintiff be awarded prejudgment interest pursuant to Civil Code
2 §3291; and

3 6. Such other and further relief as the Court deems just and proper.

4 Dated: July 25, 2024

VAUGHAN & ASSOCIATES LAW OFFICE, APC

5 By: /s/ Cris C. Vaughan
6 CRIS C. VAUGHAN
7 Attorney for Plaintiff Richard Johnson

8
9 **DEMAND FOR JURY**

10 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

11 Dated: July 25, 2024

VAUGHAN & ASSOCIATES LAW OFFICE, APC

12 By: /s/ Cris C. Vaughan
13 CRIS C. VAUGHAN